No. 05-1352

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SUPREME COURT, U.S.

In The Supreme Court of the United States

MATTHEW SMITH,

Petitioner,

v.

THE PEOPLE OF THE STATE OF NEW YORK,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE STATE OF NEW YORK COURT OF APPEALS

REPLY TO BRIEF IN OPPOSITION

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INTRODUCTION

Petitioner submits this short Reply to Respondent's Brief in Opposition to counter respondent's efforts to re-frame the question presented to something other than what is raised by petitioner in his Petition for a Writ of Certiorari. Petitioner contends that the state court record regarding whether he knowingly and voluntarily entered into a written waiver of his jury trial rights is silent and, therefore, constitutionally deficient. Respondent attempts to shift the focus of the Petition by resorting to the circular reasoning that because a written waiver exists, the record regarding whether it was the product of an intelligent and self-protecting waiver is not silent. Contrary to respondent's contention, the mere existence of a waiver document that does not reference any of the rights implicated by the waiver does not give the state court record a voice with respect to whether the challenged jury trial waiver was made knowingly and intelligently.

REASONS FOR GRANTING THE PETITION

I. The Record With Respect To Petitioner's Purported Waiver Of His Right To A Jury Trial Is Silent.

Respondent counters petitioner's assertion that the record is silent as to whether the written waiver of jury trial challenged here was made knowingly and intelligently by arguing that the existence of the waiver document itself disposes of the issue. Respondent's Brief In Opposition To Petition For Writ Of Certiorari, p. 3. That cannot be the case, and it distorts the argument petitioner urges before this Court.

First, the mere existence of a waiver document is not itself any evidence that the waiver of jury trial derived therefrom is an "intelligent, competent, self-protecting waiver" of the fundamental rights associated with a jury trial, *Adams v. United States ex rel. McCann*, 317 U.S. 269, 278, 63 S. Ct. 236 (1942), unless it addresses those rights in some fashion. The waiver form at issue in the instant case states simply that the accused waived his right to a jury trial (A 39). It does not in any way address the constitutional nature of the right being relinquished, and it does not explain: that petitioner was giving up his right to have twelve peers determine whether the prosecutor proved guilt beyond a reasonable doubt; that petitioner was waiving his right to a unanimous verdict of twelve jurors; that petitioner was surrendering the right to participate in selecting

jurors to decide his fate; and that no one could threaten petitioner or force him to give up his right to a jury trial, or promise him something in exchange for doing so. Consequently, the waiver form itself does not transform this state court record from one of silence to one that can contribute meaningfully to answering the question of whether petitioner entered into a knowing, competent, and self-protecting waiver. *Adams v. United States ex rel. McCann, supra*. Respondent's argument simply invites the Court to improperly presume a waiver of a fundamental right on the basis of a written form that does not discuss any of the important concerns related to abandoning such a right. *See, e.g., Boykin v. Alabama*, 395 U.S. 238, 243, 89 S. Ct. 1709 (1969).

Second, respondent maintains that the Court should continue to allow determination of the validity of jury trial waivers on a case-by-case basis utilizing each state's individual and peculiar waiver practices. Respondent's Brief In Opposition To Petition For Writ Of Certiorari, pp. 1-2, 7. Petitioner contends that such a judicially-aloof posture wrongly exposes the protection of this crucial constitutional right to the vagaries of disparate state processes that vary in the degree to which they ensure that jury waivers are properly taken from the accused—especially when at least one state, New York, allows a trial court to accept a jury waiver without even addressing the accused himself concerning the waiver.

Contrary to respondent's claim that "petitioner argues that the trial court is required to follow a long, detailed colloquy," before accepting a

jury trial waiver, Respondent's Brief In Opposition To Petition For Writ Of Certiorari, p. 4, petitioner made clear in his Petition that he is not asking for such relief from this Court. Rather, petitioner is seeking something much more fundamental, both in importance and common sense: a direction from this Court to New York State prescribing that the minimum guarantees of the Sixth and Fourteenth Amendments require that the trial court engage in some communication with the accused to determine the validity of a jury trial waiver. Whether the communication involves a detailed colloquy of the defendant's understanding of the rights he is waiving or a more perfunctory inquiry intended to confirm the defendant's signing of a written waiver that describes the rights he is relinquishing would be left up to New York. Either approach would yield some assurance that the defendant is entering into the contract knowing of the "relevant circumstances and likely consequences of the waiver," *Brady v. United States*, 397 U.S. 742, 748, 90 S. Ct. 1463 (1970). The procedure followed by the trial court in petitioner's case, and approved by the New York Court of Appeals, provides no such assurance and, therefore, violates the Sixth and Fourteenth Amendments.

CONCLUSION

Accordingly, petitioner respectfully requests that this Court grant a writ of certiorari to the New York Court of Appeals, and that the Court grant such other and further relief as it deems just and necessary.

Respectfully submitted,

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